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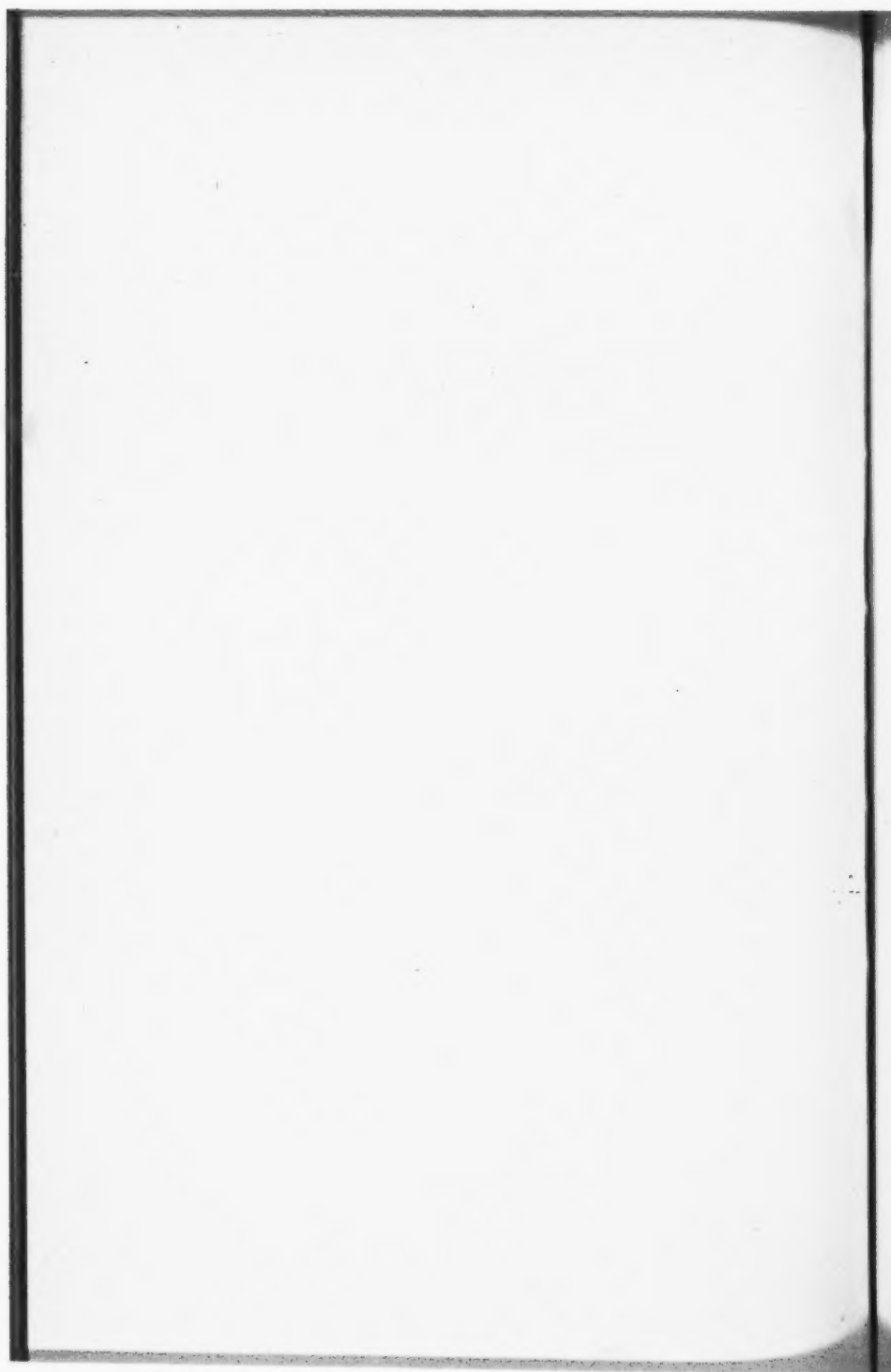
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(1)



In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 431

VINCENT RAYMOND DUNNE, JAMES P. CANNON,
EDWARD PALMQUIST, MAX GELDMAN, OSCAR
COOVER, EMIL HANSEN, ALFRED RUSSELL, GRACE
CARLSON, HARRY DEBOER, FARRELL DOBBS, FELIX
MORROW, CARL B. KUEHN, JAKE COOPER, CARLOS
HUDSON, CARL SKOGLUND, ALBERT GOLDMAN,
CLARENCE HAMEL AND OSCAR SCHOENFELD, PETI-
TIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals
(R. 1316-1344) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals
was entered September 20, 1943 (R. 1344-1345).

(1)

The petition for a writ of certiorari was filed October 16, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

STATUTES INVOLVED

Sections 1, 2, and 3 of the Alien Registration Act of June 28, 1940, c. 439, Title I, 54 Stat. 670-671 (18 U. S. C. 9, 10, and 11), provide as follows:

SECTION 1. (a) It shall be unlawful for any person, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States—

(1) to advise, counsel, urge, or in any manner cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, as defined in section 1 of the National Defense Act of June 3, 1916, as amended (48 Stat. 153; U. S. C., title 10,

sec. 2), the Navy, Marine Corps, Coast Guard, Naval Reserve, and Marine Corps Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

SEC. 2. (a) It shall be unlawful for any person—

(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

(b) For the purposes of this section, the term "government in the United States" means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the government of any political subdivision of any of them.

SEC. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of this title.

QUESTIONS PRESENTED

1. Whether Sections 1, 2, and 3 of the Alien Registration Act of June 28, 1940, either inherently or as applied in the instant case, are invalid under the First Amendment as an unwarranted restriction of the right of free speech.

2. Whether as to each of the petitioners the evidence was sufficient to sustain his conviction.

STATEMENT

The eighteen petitioners and eleven other persons¹ were indicted, in two counts, in the District Court of the United States for the District of Minnesota (R. 5-12). The first count charged violation of Section 6 of the Criminal Code (18

¹ Of the 11 others one died before trial (R. 59), 5 were acquitted on both counts by a verdict directed by the court (R. 72), and the remaining 5 were acquitted on both counts by the jury (R. 73-74).

U. S. C. 6)² (R. 10); the second charged violation of Section 3 of the Act of June 28, 1940 (*supra*, p. 4), in that the defendants conspired to commit acts prohibited by Sections 1 and 2 (*supra*, pp. 2-4) (R. 10-12). The jury acquitted all of the petitioners on the first count but found them guilty on the second (R. 73-74). Twelve of them were sentenced to 16 months' imprisonment each,³ and six to imprisonment for a year and a day each.⁴ On appeal to the Circuit Court of Appeals for the Eighth Circuit, the convictions were affirmed (R. 1316-1345).

Count 2 (R. 10-12) alleged, in substance, that continuously from June 28, 1940, petitioners conspired and agreed with each other and with unknown persons:

(1) To advise, counsel, urge and cause, and to distribute printed matter advising, counseling and

² This section provides as follows:

"If two or more persons * * * conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than \$5,000 or imprisoned not more than six years, or both."

³ Dunne (R. 81), Cannon (R. 82), Carlson (R. 84), Cooper (R. 85), Coover (R. 86), Dobbs (R. 89), Geldman (R. 90), Goldman (R. 92), Hansen (R. 93), Hudson (R. 95), Morrow (R. 98), and Skoglund (R. 103).

⁴ DeBoer (R. 88), Hamel (R. 94), Kuehn (R. 97), Palmquist (R. 99), Russell (R. 100), and Schoenfeld (R. 102).

urging, insubordination, disloyalty, mutiny, and refusal of duty by members of the armed forces of the United States (R. 11);

(2) To advocate, abet, advise, and teach, and to publish and issue printed matter advocating, advising, and teaching, the duty, necessity, and propriety of overthrowing and destroying the Government of the United States by force and violence (R. 11-12);

(3) To organize and help to organize, and knowing their purposes, to become members of and affiliated with, societies, groups, and assemblies of persons, teaching, advocating, and encouraging the forcible overthrow and destruction of the Government of the United States (R. 12).

Count 2 also alleged, in substance, that petitioners sought to carry out and accomplish their conspiracy (R. 12) by certain acts taken and to be taken (R. 7-10), including the following:

(1) As officers, leaders, and active members of the Socialist Workers Party, they would induce and encourage other members, and nonmembers, to join with them to bring about forcible opposition to, and violent overthrow and destruction of the Government of the United States (R. 7);

(2) The overthrow would be brought about at a time deemed propitious by petitioners by means of an armed revolution, to be joined in by such workers and laborers as petitioners could procure by urging, counseling, and persuading them that the

United States Government was imperialistic and capitalistic and organized and constituted to subject them to deprivations, and to foreclose them from owning, controlling, and managing all property and industry in the country (R. 7);

(3) Party members were to be placed in key positions in major industries, and in trade unions, where they would be in position to cause a cessation of work and of production, and thereby facilitate the armed revolution by preventing necessary measures of defense by the Government (R. 8); members of the United States military and naval personnel were to be made dissatisfied, undisciplined, and insubordinate, the efficiency of those forces hindered by party members when drafted, and control of them sought, so as to cause the personnel to revolt against their officers (R. 8-9); control by workers and trade unions of the militia was to be advocated; workers were to be advised and encouraged to arm and become proficient in their use, and to be organized into military units, and drilled in the use of arms, ostensibly as, and designated, Union Defense Guards, but designed and intended to be ultimately used to overthrow by force the Government of the United States (R. 9);

(4) Firearms, weapons, and ammunition were to be procured for those purposes (R. 9); the violent Russian Revolution of 1917 was to be accepted as the formula, and the principles, teach-

ings and advice of V. I. Lenin and Leon Trotsky were to be relied on as guides to action, for the accomplishment of petitioners' purposes (R. 9-10); and the personal advice and counsel and directions of Leon Trotsky were to be sought and received by petitioners, certain of whom were to visit him in Mexico for those purposes (R. 10);

(5) Followers were to be sought by printing and distributing printed matter advocating the forcible overthrow and destruction of all capitalist governments, of which the United States was considered to be the foremost (R. 10).

The evidence in support of these allegations may be summarized as follows:

1. *History of the Socialist Workers' Party.*—Petitioners Dunne and Cannon were among those who were expelled from the Communist Party in 1928 for supporting Trotsky in his controversy with Stalin,⁵ and who thenceforth designated themselves the "Trotskyist Group" (R. 858-859, 1023). Organizing as a group they took the name "Communist League of America" and within six months had 100 members and held a conference. In 1934 they united with the American Workers' Party, adopting the name "Workers' Party of the United States." (R. 859.) In 1936 the Trotskyists joined the Socialist Party (R. 195-196, 860), fol-

⁵ Previously petitioners Dunne and Cannon had been members of the International Workers of the World (R. 857-859, 1050-1051).

lowing a split in that Party which had resulted in the withdrawal of its more conservative elements (859-860); but while in the Socialist Party they maintained their identity as a Section (R. 195, 402).⁶ They were expelled by the Socialist Party in 1937 (R. 860). The group then arranged a convention at Chicago, held December 31, 1937-January 3, 1938, at which the Socialist Workers' Party was organized (R. 861, 1176), with Trotsky as its ideological leader (R. 260, 285).⁷ A Constitution and Declaration of Principles

⁶ Included in the Trotskyist Group while affiliated with the Socialist Party were petitioners Dunne (R. 195, 458-459), Cannon (R. 860), Carlson (R. 1110), Dobbs, DeBoer, Skoglund, Hudson, Cooper, Hansen, Palmquist, and Kuehn (R. 195-196).

⁷ The Socialist Workers' Party was organized on a national basis, with headquarters in New York (R. 202) and branches throughout the country, the largest being in Minneapolis, Chicago, and New York (Pet. 4). It has a national membership of about 2,000, the Minneapolis branch having about 200 (R. 446). The highest body is the National Convention. Between conventions its authority is vested in a National Committee, which directs the work of and decides questions of policy for the Party (R. 212). The basic Party units are the branches, organized either on a territorial or occupational basis (R. 211), and governed by an executive committee between meetings (R. 212, 213). Each member accepts the Party's Declaration of Principles and Constitution, to which he is bound, must belong to a branch, and agrees to engage actively in Party work and to abide by Party discipline (R. 210, 211, 212). Decisions of the National Committee and governing bodies are obligatory on members and subordinate bodies, and violations are punishable by expulsion (R. 214-215).

(Gov. Ex. 1, R. 1176-1219) were adopted.⁸ The Party affiliated with and became the American Section of the Fourth International (R. 1194), an international revolutionary organization under the leadership of Trotsky (R. 260, 1193).

2. *Program and Activities of the Socialist Workers Party.*—The program of the Party rests on the principles of Marxism as expounded by Marx, Engels, Lenin, and Trotsky, and on the basic documents of the Third Communist International from its founding through its first four World Congresses (R. 220). At this point the Party breaks with the Communist International for the alleged reason that the latter, under the leadership of Stalin, has become “reactionary” and “bureaucratic” and has lost its “revolutionary” character (R. 220, 225, 226, 290-291).

The objective of the Party is the destruction of the existing constitutional government in the United States (R. 744-746, 979, 1084, 1183), and the substitution of a Party dictatorship resting on the armed force of mass militia and having its basis in workers’ councils or soviets (R. 221, 258, 263, 1180, 1183-1185). The Party regards itself as the “general staff” to direct the working

⁸ As petitioners state (Pet. 4), at a special convention in December 1940, the Declaration of Principles was suspended, and its circulation was thereafter discontinued (R. 870, 903); but they conceded at the trial (R. 872-874) that a new declaration was prepared at a conference held shortly before the trial and that “the basic principles of the new are the same as the old.”

classes in the revolutionary accomplishment of its program (R. 219, 220, 267). Furthermore, its program calls for the domination of labor unions by placing Party members in key positions therein, so as to enable it to control the economy of the nation (R. 271, 439, 683), to stop production (R. 737), and, by precipitating or utilizing a crisis arising from whatever causes, to bring about an uprising and the overthrow of the Government (R. 264, 272, 273, 287, 413, 439, 465, 466, 472, 492, 540, 544, 547-548, 582-583, 591, 595, 598, 614, 688, 743, 744-746, 748, 760, 803, 805-807). The Party's policies "flow from the perspective of seizing power" (R. 582), and its program contemplates the development of "revolutionary situations" during periods of war or depression or of public scandal (R. 234, 439, 444, 464-465, 740) so that at some propitious time of such a character the overthrow of the Government may be attained. The Party teaches that the contemplated revolution is imminent (R. 542-544, 628, 738) and that it may be successfully achieved in this country within the comparatively near future (R. 582-583). It urges that each worker should become proficient in the military arts so that "he can best defend the interests of the working class" (R. 620), and advocates the taking advantage of a war emergency, whenever it may occur, for the purpose of attaining the overthrow of the Government by turning "the imperialist war into civil war" (R. 719, 731).

The Party advocates continuance of the class struggle during war (R. 376) and would require, as a condition of its being willing to support the defense of this country in time of war, "that we first overthrow the government of the capitalists and replace it with a government of the workers" (R. 375).⁹ With the contemplated revolution thus achieved the Party program calls for an ensuing dictatorship of the proletariat, which would continue during a period of transition in which all property would be expropriated without compensation and the so-called capitalistic class eliminated. (R. 576-577, 1182-1183.) The Party program is international in scope, calling for integration and submergence of the United States in a world socialist soviet state (R. 219, 221, 222, 264, 1186).

⁹ The true allegiance of the Party and its members is to the Union of Soviet Socialist Republics (R. 235, 236, 547, 1207). They differentiate between the U. S. S. R. and the "Stalinist bureaucratic machine" which controls it (R. 236, 1191, 1208-1209). They defend the former (R. 236, 1208-1209) while advocating the forcible overthrow of its ruling group (R. 935). In the event of the United States becoming allied with the U. S. S. R. in war, they intended to support the latter, while "expos[ing] the treacherous imperialist aims of the United States in the alliance" and calling for its overthrow (R. 235). A meeting of members of the Party at Minneapolis in 1940 adopted a resolution "that they would defend the principles of Soviet Russia against the United States and any other capitalistic government in the event of war," and the discussion preceding adoption of such resolution proposed that this would be done "by tying up transportation and working to sabotage industry" (R. 547).

As a condition of membership in the Party, it is necessary to accept its Declaration of Principles and agree to submit to its discipline and to engage actively in its work (R. 1213). The Party Constitution provides that all decisions of its governing bodies are binding on the members, and subjects them to disciplinary action for disobedience (R. 1217).

As previously noted, the Party program calls for domination of trade-unions. It has been able to secure the control of Local No. 544, International Brotherhood of Teamsters (R. 269-270, 330, 456, 457, 491-492, 511, 513, 689, 697), the largest A. F. of L. Union in Minneapolis (R. 682), having about 5,000 members (R. 496).¹⁰ Through this union it was in a position to control the Central

¹⁰ This union and its predecessor, Local No. 574, which had a membership of 6500 in 1941 (R. 658), were controlled by petitioners from 1936 through June 1941 (R. 689) as follows: The leadership of the Local was in the hands of Dunne, Skoglund, Dobbs, and Hansen (R. 456, 457, 658). Dunne was an organizer in 1938 (R. 267, 269), 1939 (R. 604-605) and 1940 (R. 697), and on the Executive Board in 1939 (R. 512). Skoglund was president of the Executive Board in 1938, 1939 (R. 604) and 1940 (R. 513), a trustee in 1938 (R. 267, 269), and an organizer in 1939 (R. 512) and 1940 (R. 697). Hansen was an organizer and trustee in 1938 (R. 267-268, 269, 604) and 1939 (R. 512, 604), and a trustee in 1940 (R. 697). He also presided at meetings of the Grievance Board (R. 507). Hamel was an organizer in 1938 (R. 267, 269), 1939 (R. 512, 604-605) and 1940 (R. 697). DeBoer was business agent in 1938 (R. 267, 270), and an organizer in 1938 (R. 270, 604), 1939 (R. 512, 604) and 1940 (R. 697). Russell was an executive officer in 1940 (R. 331, 332, 475).

Labor Union and was represented on the Teamsters Joint Council (R. 682). It also controlled the Federal Workers Section of the local (R. 270, 495, 549).¹¹ Petitioner Dobbs held responsible positions in the International Brotherhood of Teamsters (R. 269, 331, 335); petitioner Coover was a member of the Electrical Workers' Union (R. 269); another member of the Party was in charge of the Cab Drivers' Union, Local No. 221 (R. 681); and petitioners Hudson and Morrow were editors of the *Northwest Organizer*, the official publication of the Teamsters' Joint Council (R. 270, 605). The Party assessed and collected ten percent of the salaries of all of its employed members (R. 408-409, 697).

The Party acted in close collaboration with Trotsky¹² (R. 260, 284, 356, 416, 605, 630), and adopted his suggestion that military units be established in labor unions (R. 286-289, 491, 546, 640-641).¹³ Attempts were made to establish such a unit in Local No. 359, Warehouse Union, and a Union Defense Guard was set up in Local No.

¹¹ Petitioners Geldman and Palmquist controlled this section, and petitioner Kuehn was active in it (R. 270, 495). Petitioners Cooper and Schoenfeld were active in the Youth Section (R. 310, 495, 496).

¹² Leading Party members used an automobile owned by Local No. 544 for a trip to Mexico to visit Trotsky (R. 605, 610-613), and union funds were paid to a Party member for serving as a guard for Trotsky (R. 289, 544, 605-607, 630).

¹³ Trotsky specifically made this suggestion to petitioner Hansen, and also discussed it with petitioners Dunne and Cannon (R. 287-289).

544 (R. 289). Such guards were to constitute the nucleus of a revolutionary Red Army (R. 266, 606), to be used locally to battle the police and National Guard (R. 638, 639, 725) and on a national scale to overthrow the Government by armed rebellion at an opportune time (R. 415). The activities of the Union Defense Guard of Local No. 544 were directed by Party members (R. 491-492, 535, 585, 591),¹⁴ and its meetings were addressed by them (R. 1005, 1007, 1011, 1012, 1014).¹⁵

Rifles and ammunition were supplied for the Guard (R. 454, 1015), target practice was held regularly every week (R. 454, 532, 696, 758, 1015), and at one time a mass test mobilization of at least 400 Guardsmen was staged in the streets of Minneapolis (R. 535, 629, 693, 758).¹⁶ The Party is not pacifistic (R. 713, 795, 805, 1084) and accepts the principle of military training, but does so in order that the proletariat may know how to use guns effectively (R. 617-618, 804-805, 822) and to act as commanders (R. 794) when revolution is

¹⁴ Petitioner Skoglund was president of the Executive Board of Local No. 544 when the Guard was formed (R. 1015). Petitioner Hansen was in charge of the Guard (R. 585, 591).

¹⁵ Petitioners Dunne (R. 763-764, 1005, 1007, 1014), Dobbs (R. 1005), DeBoer (R. 1011, 1012), Hansen (R. 1011, 1012, 1014), and Skoglund (R. 1012, 1014).

¹⁶ Petitioner Hansen with another was in charge of the mobilization (R. 535, 758), and petitioner DeBoer participated therein (R. 537).

"ripe" (R. 265, 543, 795, 796, 815). Its program calls for agitation to impair the discipline of the present armed forces for the purpose of causing rebellion therein (R. 265, 266, 280, 564-565). Former and prospective members of the armed forces were approached and solicited to agitate for the Party and create dissension in the Army (R. 494, 538, 543, 685, 688, 741; see also R. 277-278, 280, 458, 515).

The Party contemplated and took steps toward operating illegally (R. 448, 467-468), and, at a time when it was being investigated by the Federal Bureau of Investigation, destroyed its books (R. 539, 563) and issued orders for the destruction of membership cards, assigning to each member a "number" in lieu of a card (R. 490, 500, 510). It advocates the violation of injunctions (R. 426, 428), and calls for throwing off the "shackles of bourgeois law" (R. 724-725). Petitioners do not deny the Party's advocacy of the necessity of overthrowing existing government by the use of force and violence, but undertake instead to justify resort to such means as a form of defense against force and violence that they purport to predict will come first from the supporters of the government whose overthrow they seek (Pet. 19; R. 230, 234, 235, 263, 265, 266, 377, 402, 403, 409, 411, 412, 413, 414, 472, 510, 1206-1208, 1256-1258).

Further evidence of the petitioners' knowledge of and agreement with the Party program, and of its and their activities, is set forth in the Argument (*infra*, pp. 25-42).

ARGUMENT

I

Petitioners were convicted under Section 3 of the Act of June 28, 1940, of conspiracy to violate Sections 1 and 2 of the Act. The latter sections are attacked as in violation of the First Amendment. Such a challenge is manifestly an important one. But in the context of the present case the constitutional issues will be found, we believe, to be less novel and extensive than petitioners maintain.

1. Section 1, as petitioners state (Pet. 11), which prohibits counseling of disaffection in the armed forces, is substantially identical with the portion of Section 3 of the Espionage Act of June 15, 1917 (c. 30, 40 Stat. 219; 50 U. S. C. 33), which punishes "whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty" in the armed forces. The constitutionality of the earlier statute was upheld by a unanimous Court in *Schenck v. United States*, 249 U. S. 47.¹⁷ Petitioners distinguish the present

¹⁷ Also in *Frohwerk v. United States*, 249 U. S. 204, and *Debs v. United States*, 249 U. S. 211.

statute only on the ground that it was enacted when the country was at peace and applies in both peace and war (Pet. 12). But the power of Congress to "raise and support armies" and to "provide and maintain a navy" exists during peace as well as war; and a law whose plain object is to maintain loyalty, obedience, and integrity in the armed forces by protecting them from planned subversion, whether the nation be at peace or war, is, we submit, "necessary and proper for carrying into execution the foregoing powers." The question is not whether imminence of war justifies the stifling of opposition to war but whether it may call as imperatively as war itself for measures making it unlawful, as the present statute does, deliberately to foment "insubordination, disloyalty, mutiny, or refusal of duty, in the armed forces."

Petitioners contend, however, that there was no "clear and present danger" of military disaffection as a result of their activities, and that hence Section 1 is invalid as here applied (Pet. 13, 15-16). This contention ignores the fact that a necessary element of the offense under Section 1 is a specific intent to interfere with the loyalty, morale, or discipline of the armed forces.¹⁸ Moreover, the jury was instructed that the law punishes those "who knowingly indulge in acts or expressions barred by the statute having for their

¹⁸ In quoting from this section, petitioners omit the portion containing the requirement of such intent (Pet. 16).

end the undermining of that loyalty"; and that to be convicted the defendants must be found beyond a reasonable doubt to have conspired "with intent to" interfere with military loyalty or discipline (R. 1165-1166). This is vitally different from a predication of guilt on utterances having a "normal tendency" to cause the apprehended harm, and constitutes a safeguard which is recognized as being fully as adequate as the test of "clear and present danger" of the harm. See Holmes, J., dissenting, in *Abrams v. United States*, 250 U. S. 616, 628: "Publishing those opinions for the very purpose of obstructing however, might indicate a greater danger and at any rate would have the quality of an attempt. So I assume that the second leaflet if published for the purposes alleged in the fourth count might be punishable."¹⁹ The Court has recently put the matter pithily (*Taylor v. Mississippi*, decided June 14, 1942, Nos. 826-828, 1942 Term): "As applied to the appellants it punishes them although what they communicated is not claimed or shown to have been done *with an evil or sinister purpose*, to have advocated or incited subversive action against the nation or state, or to have threatened any clear and present danger to our institutions or our government." [Emphasis supplied.] The evidence showing that peti-

¹⁹ See also Brandeis, J., concurring in *Whitney v. California*, 274 U. S. 357, 373.

tioners acted with requisite intent in summarized *infra*, pp. ~~25-28~~, 37-41.

Section 1 is additionally supported by the considerations discussed immediately below in support of Section 2.

2. Section 2 of the Act, prohibiting advocacy of overthrow of any Government in the United States by force, is substantially similar to the peacetime statutes sustained in *Gitlow v. New York*, 268 U. S. 652, and *Whitney v. California*, 274 U. S. 357.²⁰ Petitioners distinguish these cases only on the ground that they involved the Fourteenth rather than the First Amendment (Pet. 12-13). But in view of the spate of decisions holding state action violative of the guarantee of freedom of speech, press, and assembly, the distinction is without substance. It is unnecessary to consider whether the *Gitlow* and *Whitney* cases were correctly decided on their facts. They do, at all events, lay down a principle that has been consistently recognized as important, and that has special bearing on the precise application of the "clear and present danger" test in the present case. The principle, established in the *Gitlow* case, is that weight must be given to the fact that "the legislative body itself has previously determined the danger of

²⁰ The present statute makes a more specific requirement of intent to cause such overthrow, in respect of the distribution of written matter.

substantive evil arising from utterances of a specified character" (268 U. S. at 671). In contrast are the cases involving statutory or common-law prohibitions "which merely punish specified acts in general terms, without specific reference to the use of language" (*Id.* at 670). This distinction has been recognized in subsequent and recent decisions, as the court below observed (R. 1330). The judgment here involved is one which, as described in *Bridges v. California*, 314 U. S. 252, 261, comes "encased in the armor wrought by prior legislative deliberation." See also *Cantwell v. Connecticut*, 310 U. S. 296, 307-308; *Herndon v. Lowry*, 301 U. S. 242, 261-264. We do not suggest that the legislative judgment is conclusive. We do maintain that it affects significantly the application of the "clear and present danger" rule.

As applied to Section 2 of the present Act, the constitutional question is one of sustaining the legislative judgment concerning the danger produced by a class of utterances, not one of establishing that the utterances of the defendants in themselves constituted such a danger. Petitioners have proceeded on a contrary assumption. Their requests for instructions on this issue embodied the requirement that the jury find beyond a reasonable doubt that defendants' utterances themselves created a clear and present danger of the overthrow of the Government of the United States

by force and violence (R. 1133, 1134). Such instructions were properly refused (R. 1143). The issue of clear and present danger was not thereby put out of the case, however. It was considered by both courts below in passing upon the legislative judgment (R. 854, on motion of defendants for directed verdict; R. 1320-1321, 1329-1330).²¹ The legislative judgment is supported not only by facts judicially cognizable bearing on the crisis which we were entering at the time the Act was passed, but also by the evidence concerning petitioners' program and militant activities themselves, both before and immediately after the date of enactment of the Act. The evidence summarized in the Statement, *supra*, and at pages 25-41, *infra*, is thus relevant on both the question of petitioners' guilt in fact and the question of the reasonableness of the legislative judgment.

²¹ The asserted concession of Government counsel at the trial, referred to in the Petition (pp. 13, 15), is simply that it was not necessary to show a clear and present danger "that these defendants could have succeeded in overthrowing the Government by force." Defendants' counsel had argued that an armed guard of "perhaps five hundred men at the most" did not constitute a danger "to the existence of the United States" (R. 834). The assumption that Congress could penalize only that conduct which a jury would conclude was, of itself and in isolation, beyond doubt an imminent danger to the national Government, is a basic misconception in petitioners' argument.

II

Petitioners, conceding that they knew the Party program (Pet. 23), contend that it was subject to two interpretations, one reprehensible and one permissible, and that there is no evidence showing that they interpreted it to advocate overthrowing the Government by force or causing insubordination in the armed forces (Pet. 23-24). They contend that they do not advocate the use of force and violence to bring about revolution, but merely predict that revolution will be brought about by such means. Their explanation is that they will resort to force and violence only as a defense against the resistance of the capitalist class to the establishment of socialism. (Pet. 19-21.) But the evidence must be viewed here in the light of the charge to the jury.

The trial judge specifically instructed the jury as to the very distinction between advocacy and prediction on which petitioners now rely.²²

Other portions of the charge are also pertinent. The jury was cautioned that advocacy of a "social

²² "You are further instructed that it is not the abstract doctrine of overthrowing organized government by unlawful means which is denounced by the law, but the advocacy of action for the accomplishment of that purpose; and a mere grouping of historical events and a prophetic deduction from them would constitute neither advocacy nor advising or teaching of a doctrine for the overthrow of government by force and violence. So that, if the defendants, on the basis of an analysis of social events, merely predicted that a change in the economic basis of society would be accompanied by

revolution" was illegal only if proved beyond a reasonable doubt that the conspiracy was to advocate that this should be brought about by force or violence (R. 1161). The defendants had a right, the judge charged, to be active in trade unions, to strike, and to organize a guard for the defense of their union (R. 1163-1164). Likewise there was a right to criticize freely the Government and its high officials, to express opposition to our entry into war, and to condemn our economic system (R. 1165). The jury was admonished against prejudice or emotionalism (R. 1163).

a. *Evidence of the relation of petitioners to the Socialist Workers' Party and of their activities in support of its program.*—We have previously noted in the Statement (*supra*, p. 13) that membership in the Party requires acceptance of its Declaration of Principles, agreement to engage actively in its work, and submission to the authority and disciplinary action of its governing bodies. Petitioners were organizers, charter members, and leaders of the Party, and were active in formulating and executing its program. The Party was their creation, the organ and instrumentality through which they, as the pre-existing and continuing Trotskyist Group, expressed themselves

violence but did not conspire to advocate, advise, abet or teach the duty, necessity, propriety or desirability of the use of violence in order to effect that change, then the defendants are not guilty under that section of the second count of the indictment". (R. 1164.)

and carried on their activities. The activities of the individual petitioners in support of the Party's program may be summarized as follows:

Petitioners Dunne, Cannon, Dobbs, and Carlson.—Dunne was a delegate to (R. 655), and Cannon a member of the Leading Committee that called (R. 861), the Founding Convention of the Party. Dunne is a member of its National Committee (R. 310, 1061, 1074). Cannon is the Secretary and head of the Party (R. 857, 878) and performs duties of the National Committee (R. 913-914). Dobbs is the Party's National Labor Secretary (R. 293, 1115 1118). In 1940 Carlson was its candidate in Minnesota for United States Senator (R. 488, 1110).²³

Dunne taught that the Party would bring about an armed uprising on a national scale at an opportune time (R. 273), rejected class collaboration

²³ Dunne attended the Party's 1939 convention (R. 546), and is the leading member of the Minneapolis branch (R. 205) and served on its Executive Committee or as presiding officer at its meetings for approximately two years (R. 197). Dunne and Carlson are state organizers for the Party in Minnesota (R. 196, 1109-1110). Dunne (R. 541), Dobbs (R. 199, 206, 256, 542-543, 736) and Carlson (R. 540, 604) frequently attended membership meetings. All four were active speakers (R. 199, 205, 256, 259, 488, 588, 617, 618, 634, 656, 736, 793, 794) and writers for the Party (R. 274, 374, 616, 617, 618, 635-636, 767, 770, 780, 822, 913, 1050). Dunne, Cannon, and Dobbs admittedly are responsible Party leaders (R. 444). Dunne and Dobbs (R. 259-260) urged the purchase, and Carlson sold (R. 246), Party literature. Dunne is considered the leading revolutionist in the United States and Dobbs his protégé (R. 300).

(R. 276, 277), and admitted that the Union Defense Guard was the nucleus of a revolutionary militia (R. 491, 763-764). Cannon wrote that Trotsky's ideas were the Party's program, and that he had given it a guide for making revolutions (R. 346); that a condition to Party defense of the country was first the overthrow of the Government (R. 375); that the "only man who counts in this time of history is the man who has a gun in his hand" (R. 616-617), since "military force decides" (R. 618); and he admitted that the Party did not limit itself merely to "predicting" violence, but advised the workers to prepare for violence (R. 885).²⁴ Dobbs taught the thesis of armed uprising at an opportune time (R. 273) and said the time was close at hand (R. 542-543). He wrote that workers needed a class struggle leadership because there would be "war to the knife" (R. 275). Carlson insisted that workers take advantage of military training so as to learn to use the weapons they would have when the time came to seize power (R. 488); demanded

²⁴ Cannon also wrote that the Party would advance to meet the enemy, not await attack (R. 375); that Marxism was a guide to action, not bookman's dogma (R. 768, 938, 988-989); and that the Fourth International would turn the next war into a revolution, such as occurred two and a half years after the last war began (R. 636). He claimed the Party was the authentic successor of the "once revolutionary" Communist Party (R. 771), and expressed views consonant with and in furtherance of the Party program of causing disintegration in the army (R. 619, 917-918, 985; see also R. 620, 656, 767, 770, 963, 968, 969).

facilities be given workers to learn the use of modern weapons (R. 794); and commended a program of armed seizure of power (R. 796).²⁵

Petitioners Skoglund, Hudson, Cooper, Geldman, and Morrow.—Skoglund and Geldman were delegates to the Founding Convention of the Party (R. 655), and the latter was a delegate to its 1939 convention (R. 546). The former is a member of the National Committee (R. 309, 654-655). Skoglund, Hudson, Cooper, and Geldman belong to the Minneapolis branch; all four acted as chairmen of its meetings and served on its Executive Committee (R. 197-198, 204, 207-208, 256, 296, 493, 510, 528, 540, 545). Morrow came from New York to the Minneapolis branch, where he was active (R. 206).²⁶

²⁵ For further statements of the same nature by Dunne, see R. 257-258, 282-284, 403-404, 466, 530, 541, 598, 606, 653, 656, 780; by Dobbs, R. 563-564, 556; and by Carlson, R. 617-618, 793, 795, 822.

²⁶ All five in this group frequently attended Party meetings (R. 256, 257, 259, 267-268, 271, 273, 449, 466, 540, 545, 585). Skoglund, Hudson, Morrow, and Geldman were active as speakers at meetings (R. 205-206, 584, 604, 699, 736, 744, 746); Skoglund and Geldman made reports and the latter led discussions (R. 208, 256, 257, 450-451). Skoglund, Hudson, Geldman, and Cooper participated in the discussions (R. 256, 257, 466, 542). Skoglund, Geldman, and Cooper solicited members for the Party (R. 490, 514, 539, 613, 629, 739-740, 759-760). Hudson and Morrow wrote for the Party (R. 295, 421, 579). Cooper was a guard for Trotsky in Mexico (R. 304, 547). Cooper sold and Geldman recommended and distributed Party literature (R. 349, 531, 541, 562).

Skoglund, Hudson, and Geldman discussed the futility of balloting and the necessity of an armed overthrow of the Government (R. 257-258), and urged that the Party be made ready to take advantage of a revolutionary situation (R. 466). Cooper stated that "we" must forcibly overthrow the Government (R. 509); Morrow said that the workers would take up arms and destroy the Government (R. 744).²⁷

Petitioners Hansen, Palmquist, Goldman, Schoenfeld and Russell.—Hansen, Schoenfeld, and Palmquist belong to the Minneapolis branch, the first two having served on its Executive Committee or as presiding officers at meetings for ap-

²⁷ For further statements of the same nature by Skoglund, see R. 273, 276, 542, 740, 760; by Hudson, see R. 276, 530, 542; also R. 688; by Cooper, see R. 492, 542, 548, 614, 759-760; by Geldman, see R. 509, 542; also R. 494, 515; by Morrow, see R. 746. Morrow and Hudson were editors of the *Northwest Organizer*, the publication of the Teamsters' Joint Council (R. 270, 695), and the former was on the editorial board of the *Fourth International* and the *Socialist Appeal* during 1940 and 1941 (R. 204-205, 649-650). Morrow wrote for the Party *Labor's Answer to Conscription* (R. 342), asserting that no war engaged in by the United States deserved support of the working class, and denouncing the existing army leadership (R. 342-344, 711-713). Hudson used the name of Carl O'Shea in writing for the Party (R. 295). Under that name he wrote a review recommending a book, *New Ways of War*, to every worker and Union Defense Guardsman, not for its political knowledge but because "the meat of the book" tells how "to make home-made grenades," to "stop tanks and armored cars," to "drill men intelligently," to "make effective ordnance of a regular shot gun and shot gun shells," to "make a field unusable as an airdrome," to "make a road block," and "to check motorcycle troops" (R. 579-581).

proximately two years (R. 197-198, 204, 539, 545). Goldman is on the National Committee (R. 312) and a responsible Party member (R. 444). He was an attorney for Trotsky (R. 487), and was in Mexico City the day after Trotsky's assassination there (R. 1119). Hansen was a guard for Trotsky (R. 605, 630), and took a leading part in the formation and direction of the Union Defense Guard (R. 287, 288, 510, 535, 537, 585, 591, 606, 742-743). Russell, as an executive officer of Local No. 544 (R. 331), acted at the directions of Party leaders (R. 332, 475).²⁸

Hansen opposed class collaboration for the reason that it was preventive of successful armed revolution (R. 276), and stated that the Party's trade-union program would develop a general strike at an opportune time, for the purpose of overthrowing the Government (R. 272-273). Schoenfeld was present when violent foreign revolutions were discussed from the standpoint of

²⁸ Hansen, Palmquist, and Schoenfeld frequently attended Party meetings (R. 209, 267-268, 271, 494, 540, 604, 671), and participated in the discussions (R. 256-257). Goldman spoke at Party meetings, prepared lectures, and wrote for the Party (R. 199, 344, 800, 952). Schoenfeld was a member of the Executive Committee of the Young People's Socialist League (R. 209), the Party's youth organization (R. 1216). Russell distributed and explained (R. 333, 334), and Hansen distributed (R. 784-785) and sought subscribers for (R. 700), Party literature. Solicitations of members for the Party were made by Russell (R. 330, 477), Schoenfeld (R. 613), and Hansen (R. 697). The latter was a collector from employed members of the Party's 10 percent salary assessment (R. 269, 697).

avoiding their mistakes in the coming revolution in this country (R. 542). Palmquist said that if the Selective Service Act were adopted, drafted Party members would serve the Party by spreading dissension in the army (R. 515). Russell said that democratic means were futile (R. 476) and that power should be secured by the use of guns (R. 477) and force and violence (R. 476, 485). Goldman was on the editorial board of the *Fourth International* and the *Socialist Appeal* in 1940 and 1941 (R. 649-650). His writings for the Party include *What is Socialism* (R. 344-346, 952-953, 1220-1274), and *Where We Stand* (R. 800-803). In the former he asks the question whether "the state * * * the police, the army, the courts, the jails, the government" can "ever be defeated?" (R. 1247), and states that a "peaceful change" is impossible, that "revolutions cannot be prevented by any law," and that "the greater the strength of working-class organizations, the less violence will there be" (R. 1257-1258).²⁹

²⁹ For further statements by Hansen, see R. 412-413, 542, 743, 760, 785; by Russell, R. 334, 483, 484, 478. Goldman also wrote: "A peaceful change is an ideal most desirable. * * * The question, however, is not whether it is desirable but whether it is possible. On the statute books * * * are * * * laws providing long prison sentences for anyone who advocates the overthrow of the government by violence. Such laws will be as effective as laws against the occurrence of earthquakes. * * *" (R. 1257).

Petitioners DeBoer, Coover, Kuehn, and Hamel.—DeBoer visited Trotsky in Mexico (R. 285), and took part in activities of the Union Defense Guard (R. 537). All four belonged to the Minneapolis branch and acted as chairmen of its meetings (R. 197–198, 299, 305, 545), and DeBoer, Coover, and Kuehn served on its Executive Committee (R. 197, 198, 209).³⁰

Coover taught the thesis of an armed uprising in a revolutionary situation (R. 273), and stated that the Government must be overcome by force and violence (R. 509–510). DeBoer stated that this country needs a revolution (R. 527), and engaged in an argument with the Government witness Bartlett when the latter expressed lack of sympathy with the Party program of force and violence (R. 412). Kuehn participated in a discussion contrasting the Party's program of armed overthrow of the Government with that of the So-

³⁰ All in this group frequently attended Party meetings (R. 207, 209, 256–257, 493–494, 540, 542, 604, 682, 694–695, 699), and participated in the discussions (R. 209, 256, 257, 736). DeBoer, Coover, and Kuehn solicited members for the Party (R. 514, 539, 597, 613, 627, 758). Coover was financial secretary of the Minneapolis branch; he collected dues (R. 196, 201, 561, 736, 749), admitted members to meetings (R. 499), and received applications to join the Party (R. 531). Hamel collected the 10 percent Party levy on the salaries of its union members (R. 269, 697). He and DeBoer recommended that a Union Defense Guard be set up in Warehouse Union Local No. 359 (R. 289). Coover recommended (R. 348–349) and distributed (R. 541, 591), and Hamel sought subscribers for (R. 700), Party literature and papers.

cialist Party that change should be effected through the ballot (R. 257-258). Hamel was present when violent foreign revolutions were discussed from the standpoint of avoiding their mistakes in the coming revolution here (R. 542).³¹

Petitioners do not deny that they were members of the Socialist Workers' Party prior to June 28, 1940, the effective date of the Alien Registration Act, nor do they deny that the Socialist Workers' Party, without change in its established principles, continued in existence with full vigor after June 28, 1940; but they contend that the evidence does not show, as to certain undesignated petitioners, that they were members of the Party after that date (Pet. 24-25).

We submit that the only petitioners as to whom the contention may be seriously advanced are Schoenfeld and Russell.³² The record affirmatively shows that Schoenfeld was active in the

³¹ For further statements by Coover see R. 257-258, 276, 494, 511, 516, 542, 590-591, 656; by DeBoer, R. 299; by Kuehn, R. 276, 305, 494, 542; by Hamel, R. 412.

³² The evidence of membership in the conspiracy after the enactment of the statute of the other petitioners is clear. See: Dunne (R. 1023), Cannon (R. 622, 806, 861, 914, 947), Carlson (R. 588, 699, 806, 1109-1110), and Dobbs (R. 195-196, 293, 444, 622, 806), 1938 to October 1941; Skoglund (R. 195-196; see also R. 204, 257, 267, 268, 540, 754-756), and Cooper (R. 195-196, 492; see also R. 527, 545, 548, 561-562, 627-628), 1938 to January or February 1941; Hansen (R. 195-196, 700, 784; see also R. 409, 682, 694, 695, 754, 756), and Morrow (R. 204-205, 649-650; see also R. 421), from 1938 to June and July 1941, respectively; Goldman, com-

Party in 1938 (R. 204), in 1939 (R. 495, 539), and in the early part of 1940 (R. 198, 204). Russell, likewise, was an active member of the Party in 1938 (R. 475; see also R. 479) and in 1939 (R. 479-480; see also R. 483, 484, 485). His active Party affiliation still continued in the spring of 1940, when he solicited a member for the Party (R. 330), and into the month of June, when the accusation was made, which he did not deny, that his activities as an official of Local No. 544 were dictated by Party leaders (R. 475). There is no evidence in the record that either of these petitioners withdrew from the Party or in any manner indicated a lack of interest in its doctrines or of common purpose with the other petitioners. Under these circumstances, we submit that the jury, properly instructed as it was,³³ could reasonably infer that Schoenfeld and Russell were members of the conspiracy after June 28, 1940.

mencement of 1940 to July 15, 1941 (R. 649-650); DeBoer (R. 195, 648; see also 284-285, 527, 694-695), and Coover (R. 195-196, 699; see also R. 490, 500, 510, 562, 694-695, 736, 749, 754-756), 1938 to December 1940; Hamel, 1939 (R. 540) until the latter part of 1940 (R. 409); Geldman 1938 (R. 196, 655) to the fall of 1940 (R. 561, 1097; see also R. 510, 540, 546); Palmquist, 1938 (R. 195) to August 1940 (R. 505; see also R. 204, 540). Kuehn, 1938 (R. 257, 627) to December 1940 (R. 197-198, 493, 539, 542, 699; see also R. 195, 196, 205).

³³ " * * * and as to count 2 it must be proved that they were members after June 28, 1940, the date of the enactment of the statute involved in that count" (R. 1166).

b. *The Party program and the petitioners' activities in support thereof constitute militant advocacy rather than mere passive prediction of the overthrow of the Government by force and violence.*—It is apparent that petitioners and the Party are not mere spectators to the unfolding of a course of predetermined events, but assume an active role in creating and advocating the creation of, and in preparing for, the situation in which they will resort to force and violence. For, it is asserted, "Genuine revolutionists always have been distinguished by the union of theory and practice on which Marx insisted so often; ideas, words and programs are nothing if not translated into the actions of men * * *. The concrete institution in which theory and practice, word and deed, programs and men fuse is the revolutionary party" (R. 807). So, "in the last analysis men make the revolution" and "* * * a program without the men willing to fight and die for it is not even worth arguing about" (R. 807).

The Party's path of action is reflected in its rejection of parties deemed less vehement and methods less vigorous. It considers it illusory to depend on legal and parliamentary means, or on the ballot (R. 1182, 1200, 1257), and participates in elective campaigns for the purpose of spreading its revolutionary propaganda (R. 1200). It breaks with centrism (R. 1192-1193), with

parties it terms "reformist" (R. 1194, 1197, 1198), and with the "reactionary" Third Communist International (R. 1191-1192, 1196). It will have no part in class collaboration (R. 1189, 1194, 1201), denounces the country's laws (R. 426, 724-725), and proposes to operate illegally (R. 448, 467-468). Included in its goal is the defeat and destruction of the police, the courts, the jails, and the army (R. 218, 263, 979, 1247). The party stands for direct mass action (R. 1199) and strives to lead the working class so that it will be ready to take the "road to power" at the proper time (R. 265, 735). The Party advises the workers to prepare for violence (R. 885), and by its agitation tries to organize them so as to accelerate the revolution (R. 868-869). Pointing out that "Action is on the order of the day now" (R. 637), it tries "to prepare the masses to utilize the war crisis for the overthrow of U. S. capitalism * * *" (R. 376-377, 766). Its position is one of "Uncompromising opposition to the imperialist war, not only in words but in action, and especially after the United States is in" (R. 713). "This is not labor's war. Labor's war, in every country, is against the war makers, against Roosevelt as well as Hitler * * *" (R. 1063). Therefore, the Party carries on its basic task by explaining to workers the "irreconcilability" of class interests and by propagating the unity of workers in warring and neutral coun-

tries (R. 707-708). It pointed to the leading part played by the Trotskyist Group in taking over control of the City of Minneapolis and driving the police from its streets in 1934, as an example of what might be expected of it (R. 271, 272, 373, 374, 768, 988-989). The Party considers that there cannot be a successful revolution without a party, such as it is, "capable of leading and organizing the movement of the workers in a resolute fashion for a revolutionary solution of the crisis" (R. 876).

The language used by petitioners and found in the Party literature is of an inflammatory character and of general application, unmarked by any apparent distinction between advocating and predicting violence, and in its ordinary sense imports the teaching, advising, and advocating of the forcible overthrow of the Government at an opportune time. Perhaps no words were more frequently uttered or printed than "revolution," "conquest," "overthrow," "civil war," "violence," "use of arms," "military means" and "destruction."³⁴ Equally inflammatory language is found in writings and speeches sponsored by the

³⁴ See, e. g., R. 218, 219, 220, 222, 223, 224, 225, 226, 227, 229, 230, 234, 262, 263, 264, 265, 266, 275, 318, 319, 344, 345-346, 352, 618, 619, 621, 634-635, 636, 637, 639, 703, 704, 709, 719, 721, 725, 728, 731, 735, 766, 778, 793, 794, 795, 796, 807, 808, 821, 979, 986, 1084, 1087.

³⁵ See R. 217, 219, 235, 264, 265, 275, 318, 589, 703, 707, 721, 725, 731, 793-796, 805.

Party³⁵ and used at Party meetings. In sum, it was stated that use of the ballot was futile, there was to be an armed uprising, and armed overthrow of the Government was necessary (R. 257-258, 492; see also, e. g. R. 276, 284, 403-404, 476, 485, 492, 548, 599, 614, 743, 746, 759-760); the violent Russian Revolution was the example to follow (R. 656); frontiers would be crossed rather than await placidly the enemy's attack (R. 375); the Union Defense Guard was a militia for the Party though masquerading under the pretense of fighting fascism or the Silver Shirts (R. 491, 763-764); and power should be obtained through the use of guns (R. 477, 483, 484).

The tribunals below justifiably found it impossible to believe that petitioners themselves, let alone those to whom such language was directed, drew from it the metaphysical distinction between advocacy and prediction for which petitioners now contend, or interpreted it as anything but militant advocacy of the forcible overthrow of the Government. The jury's finding, based as it was upon a full and correct charge, must be deemed conclusive of their purpose. Cf. *Antolish v. Paul*, 283 Fed. 957, 959 (C. C. A. 7); *Kenmotsu v. Nagle*, 44 F. (2d) 953, 955 (C. C. A. 9); certiorari denied, 283 U. S. 832; *United States ex rel. Abern v. Wallis*, 268 Fed. 413, 414 (S. D. N. Y.)

c. *Evidence of advocacy of insubordination in the armed forces.*—Petitioners' contention that the

evidence is insufficient to support the verdict with reference to that portion of Count 2 of the indictment charging conspiracy to cause insubordination in the armed forces (Pet. 21-23) is equally without merit. The evidence is not confined, as petitioners contend (Pet. 22), to hypothetical conjectures as to future action by the Party dependent upon the occurrence of uncertain events, but establishes that petitioners and the Party advised military insubordination and that petitioners knew the Party so advised.

The Party regards it as essential to the achievement of its goal that it "destroy" "in particular the army" of the capitalist ruling class (R. 979, 1084). It states clearly the program and activities which it follows to that end:

The exploited workers have no love for their bosses, in or out of uniform. * * * But the Marxists, accepting the reality of military training, try to utilize this for socialist purposes. The workers must be taught to follow their own class interests, in the army as in the factory. At every stage the revolutionary party strives to direct the class so that at the proper time the class is ready to take the road to power. Thus at the beginning of the war, Marxists call for military training not under the capitalist officer caste but under the control of their trade unions. (R. 1085.)

Adopting a program of infiltration into the military services (R. 565), the Party calls for abolition

of the "open shop" in the army (R. 711-712,³⁶ 806) and advocates trade-union control of military training (R. 620. 816³⁷). Its military police puts the Party directly within the army while carrying on its program of disintegration:

How do we work in a conscript army? someone asked. We work the same as in a shop. * * * The masses are in the army * * *. We go in and defend the interests of the slaves of military exploitation * * *. (R. 619.)³⁸

The Party and its members are cautioned to "be with the masses, just as the Bolsheviki were in Kerensky's army" (R. 619).³⁹ Once in the army, advantage is to be taken of its training "in order to prepare to take over the power from the capitalist war makers" (R. 618).⁴⁰

The Party has as its slogan, "Turn the imperialist war into civil war" (R. 719). It calls for the fraternization "of soldiers with soldiers on the opposite side of the battle front" and carries on "constant, persistent, tireless preparation of the revolution— * * * in the bar-

³⁶ From *Labor's Answer to Conscription* by petitioner Morrow.

³⁷ Admission by counsel for all of petitioners (R. 816).

³⁸ From speech by petitioner Cannon printed in the *Socialist Appeal*, October 26, 1940.

³⁹ *Ibid.*

⁴⁰ From radio speech by petitioner Carlson as candidate of the Party for United States Senator, printed in the *Socialist Appeal*, October 26, 1940.

racks, at the front and in the fleet" (R. 621, 708, 805-806, 986). And its aim is to "teach the armed workers to turn their guns not against their fellow workers in the opposite trenches but against their enemy at home" (R. 731).

The Party's advocacy and program of inciting to rebellion in the armed forces was put in action by some of its leading members, petitioners here, who: (1) Urged maintenance of contact with draftees to keep them advised of the Party program (R. 277-278, 280, 458);⁴¹ (2) solicited an ex-serviceman to agitate at his former army post (R. 494);⁴² (3) said that the Selective Service Act, if adopted, would furnish the Party an opportunity to spread dissension, dissatisfaction, and misunderstandings in the army (R. 515);⁴³ (4) before passage of the Act, said that Party members would go into the army in event of war and do the work of the Party there and would have guns to turn on the Government when the time came (R. 688);⁴⁴ (5) told a man, who subsequently registered under the Act, that after induction Party members should form cliques, "kick" about anything possible, and create newspaper publicity adverse to the army (R. 741);⁴⁵

⁴¹ Petitioner Dunne.

⁴² Petitioners Geldman, Kuehn, Coover, and Palmquist.

⁴³ Petitioner Palmquist in presence of petitioner Geldman.

⁴⁴ Petitioner Hudson.

⁴⁵ Petitioner Dunne.

and (6) after passage of the Act, told a man subject to the draft to work for the Party in the army by "kicking" about the food and beds (R. 685-686).⁴⁶ Moreover, at Party meetings it was pointed out that drafted workers would be dissatisfied and that it would be easy for the Party to create dissension in the ranks and cause the soldiers' guns to be turned against their officers (R. 543).⁴⁷

CONCLUSION

Petitioners had a fair trial, the jury was properly instructed, and the verdict is supported by the evidence. Review by the court below was thoroughgoing. In the context of the case, the constitutional issue is limited in scope and was properly decided. Because of the importance of the interests involved, it has seemed desirable to set forth at some length

⁴⁶ Petitioner Dunne.

⁴⁷ It appears that petitioners Kuehn, Geldman, Cooper, Dunne, Skoglund, Coover, Schoenfeld, Hansen, Hamel, and probably Dodds (R. 542), all took part in these Party meetings (R. 543). Any ambiguity in this witness' testimony as to the presence of these appellants at the particular meeting must be resolved in favor of the Government. Cf. *Glasser v. United States*, 315 U. S. 60, 80. As the court below held (R. 1328), each coconspirator is responsible for what is said or done by other members to effectuate the purpose of the conspiracy. We submit that in view of the evidence of the Party's program for causing dissension and insubordination in the armed forces, and the activities of the defendants in furtherance thereof, the verdict is amply sustained as to all of the petitioners with respect to this portion of Count 2.

an analysis of the issues and evidence to aid in
judging the necessity of further review.

Respectfully submitted.

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